

1991

Funk v. Tax Commission : Unknown

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Unknown.

Unknown.

Recommended Citation

Legal Brief, *Funk v. Tax Commission*, No. 910196.00 (Utah Supreme Court, 1991).
https://digitalcommons.law.byu.edu/byu_sc1/3503

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

910196

UTAH LEGAL SERVICES, INC.

MICHAEL E. BULSON, #0486

JUDITH MAYORGA, #4630

Attorney for Plaintiff

550 - 24th Street, Suite #300

Ogden, Utah 84401

Telephone: 394-9431

FILED

APR 26

Clk. Supreme Court, Utah

IN THE SUPREME COURT OF
THE STATE OF UTAH

JACQUELINE D. FUNK,
Plaintiff,

v.

UTAH STATE TAX COMMISSION,
Defendant.

DOCKETING STATEMENT

Appeal No. 910196

Lower Court No. 900903111

JURISDICTION

1. This is an appeal from a final order of the district court granting defendant's motion to dismiss pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure. Jurisdiction is proper pursuant to Utah Code Ann. § 78-2-2(3)(j).

NATURE OF THE PROCEEDINGS

This is an appeal from a final order of the Second Judicial District Court, the Honorable David E. Roth, presiding.

DATE OF JUDGMENT AND NOTICE OF APPEAL

The district court entered an order dismissing plaintiff's complaint on April 1, 1991. The notice of appeal was filed April 4, 1991 in accordance with Rule 4(a). A Certificate that Transcript is not Required was filed with the district court on April 12, 1991.

Funk v. Utah State Tax Commission
DOCKETING STATEMENT

MATERIAL FACTS

Plaintiff filed this lawsuit as a class action, seeking declaratory and injunctive relief against the Utah State Tax Commission. Her complaint arose out of a garnishment proceeding initiated by a judgment creditor to collect an outstanding debt. The creditor served a writ of garnishment upon the Utah State Tax Commission to obtain plaintiff's 1989 state tax refund. Plaintiff contends that the Tax Commission lacked the specific and unequivocal legislative authority needed to permit garnishment of the state. She further alleges that the Tax Commission violated her rights under 15 U.S.C. §1673(a) and Rule 64(d)(iii) which limit the amount of earnings that may be garnished. Plaintiff claims that the violation of her rights under the federal statute is actionable under 42 U.S.C. §1983. Defendant maintains its actions are authorized by Utah Code Ann. §78-27-15.

ISSUES PRESENTED BY THE APPEAL

1. Whether the statute authorizes the State Tax Commission to permit garnishment of a taxpayer's tax refund.
2. Whether the Tax Commission's acquiescing to garnishment of a tax refund violates plaintiff's rights under federal and state law limiting the amount of earnings subject to garnishment.

STATUTES AND CASES BELIEVED TO BE DETERMINATIVE

- a) Utah Code Ann. §78-27-15;

**Funk v. Utah State Tax Commission
DOCKETING STATEMENT**

- b) Utah Code Ann. §78-27-16;
- c) Utah Code Ann. §63-30-6;
- d) Utah Rules of Civil Procedure 64(d)(viii);
- e) 15 U.S.C. §1673(a);
- f) Epting v. State, 546 P.2d 242 (Ut. 1976);
- g) Bailey Service & Supply Corp. v. State Road Comm., 533 P.2d 882 (Ut. 1975);
- h) Brockelman v. Brockelman, 478 F.Supp. 141 (D.Kan. 1979);
- i) State of Arizona v. Allred, 425 P.2d 572 (Ariz. 1957);
and,
- j) Holt v. Utah State Road Comm., 511 P.2d 736 (Ut. 1973);

PRIOR APPEALS


There have been no prior or related appeals in this case.

LIST OF ATTACHMENTS

- 1. Order granting Motion to Dismiss;
- 2. Notice of Appeal.

DATED this 24th day of April, 1991.

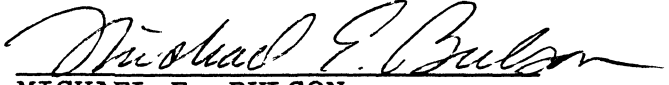
UTAH LEGAL SERVICES, INC.
Attorney for Plaintiff


MICHAEL E. BULSON
Attorney at Law

Funk v. Utah State Tax Commission
DOCKETING STATEMENT

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the above DOCKETING STATEMENT to be mailed to Clark Snelson, Assistant Attorney General, 36 South State Street, 11th Floor, Beneficial Life Tower, Salt Lake City, Utah 84111, via First-class U.S. Mail, postage prepaid, this 24th day of April, 1991.


MICHAEL E. BULSON
Attorney at Law

UTAH LEGAL SERVICES, INC.
MICHAEL E. BULSON, #0486
JUDITH MAYORGA, #4630
Attorneys for Plaintiff
550 - 24th Street, #300
Ogden, Utah 84401
Telephone: 394-9431


IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
WEBER COUNTY, STATE OF UTAH

JACQUELINE FUNK,	/	
Plaintiff,	/	NOTICE OF APPEAL
v.	/	
UTAH STATE TAX COMMISSION,	/	Civil No. 90090311
Defendant.	/	Judge

Notice is hereby given that pursuant to Utah Code Ann. §78-2-2(3)(j), plaintiff hereby appeals to the Supreme Court from the order of the above-entitled court entered on April 1, 1991, dismissing plaintiff's complaint pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure. An affidavit of impecuniosity, executed by the plaintiff is filed herewith.

DATED this 21st day of April, 1991.

UTAH LEGAL SERVICES, INC.
Attorneys for Plaintiff


MICHAEL E. BULSON
Attorney at Law

Funk v. Utah State Tax Commission
NOTICE OF APPEAL
Civil No. 900903111

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the above NOTICE OF APPEAL to be mailed to Clark Snelson, Assistant Attorney General, 36 South State, 11th Floor, Salt Lake City, Utah 84111 via First-class U.S. Mail, postage prepaid, this 4th day of April, 1991.

Catherine A. Wilms
SECRETARY

COPY

R. PAUL VAN DAM, #3312
Utah Attorney General
CLARK L. SNELSON #4673
Assistant Attorney General
36 South State, 11th Floor
Salt Lake City, Utah 84111
Telephone: (801) 533-3200

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
WEBER COUNTY, STATE OF UTAH

JACQUELINE FUNK,	/	
Plaintiff,	/	ORDER
v.	/	
UTAH STATE TAX COMMISSION,	/	Civil No. 90090311
Defendant.	/	Judge David E. Roth

Defendant's Amended Motion to Dismiss having been briefed and argued, the Court hereby makes the following findings and order:

FINDINGS

1. The court finds that the language of Utah Code Ann. §78-27-15 is clear and unambiguous.
2. The heading to the statute does not limit the statutory language.
3. The clear statutory language authorizes the State of Utah to respond to garnishment of non-state employees' tax refunds.
4. Tax refunds do not constitute "disposable earnings" and are not subject to the limitations on garnishment contained in

Funk v. Utah State Tax Commission
ORDER
Judge David E. Roth
Civil No. 90090311

Rule 64D(d)(viii) of the Utah Rules of Civil Procedure or 15 U.S.C. §1673.

5. In responding to the garnishment the State Tax Commission did not violate any common law principles or Plaintiff's rights under either Rule 64D(d)(viii), Utah Rules of Civil Procedure or 15 U.S.C. §1673.

6. Defendant's claims that Plaintiff failed to exhaust administrative remedies, failed to join an indispensable party and failed to comply with the Utah Governmental Immunities Act are not persuasive and are not a sufficient basis for dismissal of the case.

ORDER

Having found that the Tax Commission was specifically authorized by statute to respond to the garnishment and that limitations on the amount of the garnishments do not apply to tax refunds the Court finds that Plaintiff's complaint has failed to state a cause of action on which relief may be granted. Defendant's motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure is, therefore, granted. It is hereby ordered, adjudged and decreed that the above captioned case be dismissed.

Funk v. Utah State Tax Commission
ORDER
Judge David E. Roth
Civil No. 900903111

SO ORDERED this 29 day of March, 1991.

/s/
JUDGE DAVID E. ROTH
District Court Judge

Approved as to form:

Michael E. Bulson
MICHAEL E. BULSON
Attorney for Plaintiff

Judith Mayorga
JUDITH MAYORGA
Attorney for Plaintiff

Entered on 4/1/91